



UNIVERSITY OF
TORONTO
FACULTY OF LAW

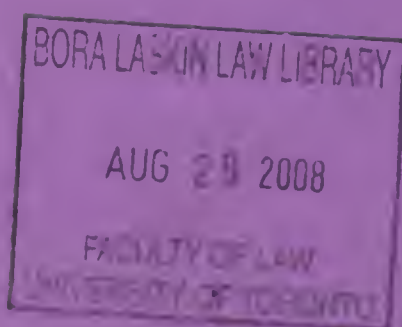


RESTITUTION

2008-2009

Professor Ernest J. Weinrib

Faculty of Law
University of Toronto



RESTITUTION

2008-2009

Professor Ernest J. Weinrib

Faculty of Law
University of Toronto



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/restitution00wein_3

RESTITUTION

I. THE NATURE OF RESTITUTION

Aristotle, <i>Nicomachean Ethics</i> , Book Five 1129a26 - 1132b20, (Ostwald trans.)	1
Ernest J. Weinrib, <i>Corrective Justice in a Nutshell</i> , 52 U.T.L.J. 349 (2000)	6
<i>Edwards v. Lee's Administrator</i> , 96 S.W. (2d) 1028 (Ky. C.A., 1936)	13
<i>Vincent v. Lake Erie Transportation Co.</i> (1910), 124 N.W. 222 (Minn. S.C.)	17
Extract from American Restatement of Restitution (1937), § 122. Benefits Derived From the Exercise of Incomplete Privilege	20
Palmer, <i>The Law of Restitution</i> , Volume I, 139-140 (Boston and Toronto: Little, Brown, 1978)	22
<i>Foskett v. McKeown</i> [2003] 3 All ER 97 (HL)	23

II. THE DEVELOPMENT OF RESTITUTION

<i>Moses v. MacFerlan</i> (1760), 97 E.R. 676, 2 Burr. 1005 (K.B.)	35
Dobbs, <i>Handbook on the Law of Remedies</i> , (St. Paul: West, 1973) 229	37
Extract from American Restatement of Restitution (1937)	51
Seavey and Scott, <i>Restitution</i> , (1938) 54 Law Quarterly Review 29, 29-32, 36-39	53
<i>Degelman v. Guaranty Trust Co. and Constantineau</i> , [1954] S.C.R. 725; [1954] 3 D.L.R. 785	57
<i>Pavey & Matthews Proprietary Ltd. v. Paul</i> (1986) 162 C.L.R. 221 (H.C. Australia)	59
<i>Pettikus v. Becker</i> (1980), 117 D.L.R. (3d) 257 (S.C.C.)	64
<i>Hunter Engineering Co. v. Syncrude Canada Ltd.</i> , [1989] 1 S.C.R. 426	72
<i>Peter v. Beblow</i> (1993), 101 D.L.R. (4th) 621 (S.C.C.)	80
<i>Dublin v. Building and Allied Trade Union</i> [1996] 2 ILRM 547 (S.C.)	93

III. UNREQUESTED BENEFITS

1. "One Cleans Another's Shoes ..."

<i>Taylor v. Laird</i> (1856), 156 E.R. 1203	100
Restatement of Restitution - s. 2	101
Birks, <i>An Introduction to the Law of Restitution</i> (1985) 101-103	102
<i>Greenwood v. Bennett</i> , [1973] 1 Q.B. 195 (C.A.)	104
<i>Nicholson v. St. Denis</i> (1975), 8 O.R. (2d) 315 (C.A.)	107
<i>Gidney v. Shank</i> [1995] 5 W.W.R. 385 (Man Q.B.)	111

<i>Gidney v. Shank</i> reversed [1996] 2 W.W.R. 383 (Man C.A.)	116
<i>LAC Minerals Ltd. v. International Corona Resources Ltd.</i> (1987), 44 D.L.R. (4th) 592 (Ont. C.A.); (1989) 61 D.L.R. (4th) 14 (S.C.C.)	118
The Electrical Appliances Case BUNDESGERICHTSHOF (SEVENTH CIVIL SENATE) 31 OCTOBER 1963*	123

2. Incidental Benefits

<i>Ruabon Steamship Co. v. London Assurance</i> , [1900] A.C. 6 (H.L.).....	127
<i>Edinburgh and District Tramways v. Courtenay</i> [1909] S.C. 99.....	131
<i>United States v. Pacific Railroad</i> 7 S. Ct. 490 (1887).....	133

3. Preserving Another's Property

<i>Binstead v. Buck</i> (1777), 2 Wm. Black. 1117 (C.P.)	135
<i>Nicholson v. Chapman</i> (1793) 126 E.R. 536 (C.P.).....	136
<i>Falcke v. Scottish Imperial Insurance Company</i> (1886), 34 Ch. D. 234.....	138
<i>Great Northern Railway v. Swaffield</i> (1874) L.R. 9 Ex. 132 (Exch.)	143
<i>Prager v. Blatspiel, Stamp and Heacock</i> , [1924] 1 KB 566 (KBD).....	145
<i>Jebara v. Ottoman Bank</i> , [1927] 2 KB 254 (C.A.)	147
<i>China Pacific S.A. v. Food Corporation of India</i> (<i>The Winston</i>), [1982] A.C. 939 (H.L.).....	148
Restatement of Restitution - s. 117.....	151

4. Preserving Another's Health

<i>Jenkins v. Tucker</i> (1788) 126 ER 555 (C.P.).....	153
<i>Shallcross v. Wright</i> (1850) 50 E.R. 1174.....	154
<i>Matheson v. Smiley</i> , [1932] 2 D.L.R. 787 (Man. C.A.)	156
Restatement of Restitution - s. 116.....	158

5. Discharging Another's Liability

<i>Moule v. Garrett</i> (1872), L.R. 7 Ex. 101 (Ex. Chamber).....	160
<i>Brooks Wharf & Bull Wharf, Ltd. v. Goodman Bros.</i> , [1936] 3 All E.R. 696 (C.A.)	162
<i>Owen v. Tate</i> , [1975] 2 All E.R. 129 (C.A.)	165
<i>Norton v. Haggett</i> (1952), 85 A. 2d 571 (Vt. S.C.).....	171
<i>Regional Municipality of Peel v. Her Majesty the Queen in right of</i> <i>Canada</i> (1992), 98 D.L.R. (4th) 140 (S.C.C.)	173

* English version by Gerhard Dannemann, in Markesinis, Lorenz, Dannemann, *The German Law of Obligations v. 1 (The Law of Contracts and Restitution: A Comparative Introduction* 789 (1997).

IV. MISTAKEN PAYMENTS

1. The Irrelevance of Fault

<i>Kelly v. Solari</i> (1841), 9 M & W 54, 152 E.R. 24	185
<i>Clark v. Eckroyd</i> (1885), 12 O.A.R. 425.....	187
<i>R.E. Jones v. Waring and Gillow</i> , [1926] A.C. 670 (H.L.).....	190

2. Change of Position

<i>Rural Municipality of Storthoaks v. Mobil Oil Canada Ltd.</i> (1975), 55 D.L.R. (3d) 1 (S.C.C.).....	194
<i>Lipkin Gorman v. Karpnale</i> , [1992] 4 All E.R. 512 (H.L.).....	196
<i>Dextra Bank & Trust Co Ltd v Bank of Jamaica</i> , [2002] 1 All ER (Comm) 193 (PC) 1 All ER (Comm) 193 (PC)	208
<i>RBC Dominion Securities Inc. v. Dawson</i> (1994), 111 D.L.R. (4th) 230 (Nfld. C.A.)	210
<i>Cheese v. Thomas</i> [1994] 1 All E.R. 35 (C.A., Civ. Div.).....	218

3. Mistake of Law and Invalid Exactions

<i>Garland v. Consumers' Gas Co.</i> , [2004] 1 S.C.R. 629	224
<i>Kingsstreet Investments Ltd. v. New Brunswick (Department of Finance)</i> [2007] 1 SCR 3	235

V. BENEFITS CONFERRED UNDER COMPULSION

<i>Astley v. Reynolds</i> (1731), 93 E.R. 939 K.B.	244
<i>Skeate v. Beale</i> (1841), 113 E.R. 688	245
<i>Knutson v. The Bourkes Syndicate</i> , [1941] S.C.R. 419	246
<i>Peter Kiewit Sons' Co. of Canada v. Eakins Construction Ltd.</i> , [1960] S.C.R. 361.....	248
<i>Morton Construction Co. Ltd. v. City of Hamilton</i> , [1962] O.R. 154 (C.A.).....	253
<i>Smith v. William Charlick Ltd.</i> (1924) 34 C.L.R. 38 (H.C.).....	255
<i>Pao On v. Lau Yiu</i> , [1979] 3 All E.R. 65 (P.C.)	258
<i>Universe Tankships Inc. of Monrovia v. International Transport Workers Federation</i> , [1983] A.C. 366 (H.L.).....	264
<i>Thorne v. Motor Trade Association</i> , [1937] A.C. 797 (H.L.).....	269
<i>CTN Cash and Carry Ltd. v. Gallaher</i> , [1994] 4 All E.R. 714	272
<i>Eadie v. Township of Brantford</i> , [1967] S.C.R. 523.....	276

VI. RESTITUTION FOR WRONGS

1. Tortious Wrongs

<i>Lamine v. Dorrell</i> (1701), <i>Ld. Ray</i> . 1216.....	280
<i>United Australia v. Barclays Bank</i> , [1941] A.C. 1 (H.L.)	281
<i>Phillips v. Homfray</i> (1883), 24 Ch. D. 439	286
<i>Strand Electric and Engineering v. Brisford Entertainments</i> , [1952] 2 Q.B. 246 (C.A.)	290
<i>Olwell v. Nye and Nissen</i> , 173 P. 2d 652 (Wash. S.C., 1946)	295

2. Breaches of Fiduciary Obligation

<i>Reading v. Attorney General</i> , [1951] A.C. 507 (H.L.)	298
<i>Attorney-General for Hong Kong v. Reid</i> , [1994] 1 A.C. 324 (P.C.).....	303

3. Breaches of Contract

<i>British Motor Trade Association v. Gilbert</i> , [1951] 2 All E.R. (641) Ch.D.).....	312
<i>New Orleans v. Firemen's Charitable Association</i> , 9 SO. 486 (La S.C., 1891)	314
<i>Adras Building Materials v. Harlow & Jones</i> , February 11, 1988 (Supreme Court of Israel); [1995] <i>Restitution Law Review</i> 235	315
<i>Attorney General v. Blake</i> [2000] 4 All E.R. 385 (H.L.).....	323